IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 524 of 2004
with
CIVIL APPLICATION No 1919 of 2004
with
FIRST APPEAL No 525 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

SHREEDEVI VIRENDRA PAREKH,HEIROF DECD.VIRENDRA C PAREKH

Versus

AHMEDABAD MUNICIPAL CORP.

Appearance:
MR DV PARIKH, Advocate for Appellant
MR MITUL K SHELAT, Advocate for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE R.K.ABICHANDANI
and
HON'BLE MR.JUSTICE D.H.WAGHELA

Date of decision: 20/09/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE R.K.ABICHANDANI for the Court)

#. Admit. The learned counsel appearing for the respondent-Corporation waives service of notice. At the instance of both the sides, the matters are taken up for final hearing since a very short point is involved.

#. The appellant challenges the judgment and order dated 22nd March, 2003, dismissing the appeals preferred by the appellant under Section 406 of the Bombay Provincial Municipal Corporations Act, 1949.

#. Only grievance urged on behalf of the appellant was that the order has been made without hearing the appellant. It was contended that 22nd March, 2003 was a non-working Saturday and judgment has been signed on that day, though it was scheduled to be pronounced on 24th March, 2003.

#. Having regard to the nature of controversy, we have urgently called for the Record & Proceedings of the Municipal Valuation Appeal No. 3697 of 1998 in which the order was made. It is not disputed that 22nd March, 2003 was a non-working Saturday for the Court. Still, however, as per the rojnama, judgment was pronounced on that day. Earlier, the matter was on board on 12th March, 2003, on which date, it was adjourned for judgment. There is no indication in the rojnama whether the parties were heard on that day.

#. After the judgment was made known to the appellant, an application was made on 24th March, 2003, in which the appellant, in terms, pointed out that though the matter was adjourned to 24th March, 2003, it was wrongly posted on 22nd March, 2003 and disposed of on a non-working Saturday. Instead of correcting the mistake pointed out by the appellant, the learned Judge made an order on 8th April, 2003, rejecting the application on the ground that there was no illegality and that such incident could be labelled only as an irregularity.

#. In our opinion, the learned Judge of the Small Cause Court missed an opportunity to correct his error, because, an obvious mistake was committed by fixing the date of judgment on 22nd March, 2003 when the appeals were adjourned to 24th March, 2004. The learned Judge, in fact, in para-4 of his order dated 8th April, 2003 accepted the fact that the appeals were fixed for judgment on 24th March, 2003 but held that it was signed on 22nd March, 2003, which was not an illegality. It was

clearly pointed out in the application exh. 9 that the matters were adjourned for further hearing to 24th March, 2003 on 12th March, 2003. From the rojnama, it appears that it was adjourned to 12th March, 2003 for hearing. The rojnama of 12.3.2003 shows that it was adjourned for judgment without mentioning the date to which it was adjourned and the rojnama dated 22nd March, 2003 shows that the judgment was pronounced on that date. It is clear that the rojnama has been written in a slipshod manner. It is obvious that the Court has to be cautious in such matters and when the appellant stated that the matter was adjourned for hearing, the Court should have, while deciding the application for restoration, indicated whether hearing was given or not. Ordinarily, if a hearing was in fact given and the matter was adjourned for judgment, then such mistake would not have assumed much importance. However, when the hearing was yet to take place and the judgment is suddenly pronounced on a non-working Saturday, it would adversely affect an important right of the appellant to be heard in the matter, denial of which cannot be brushed aside as a mere irregularity, as is sought to be done by the learned Judge. Without going into the merits of both these matters or the aspect of the maintainability of these Municipal Valuation Appeals, we hereby set aside the impugned orders dated 22nd March, 2003 at Annexure "A" and dated 8th April, 2003 below exh. 9 at Annexure "C" of both the appeals made by the learned Judge of the Small Cause Court, Ahmedabad with a direction to the Small Cause Court to hear the appeals afresh and take a decision in accordance with law including on the aspect of their maintainability after hearing the parties within three months from today. Both these appeals are accordingly allowed with no order as to costs. The Civil Application does not survive and stands disposed of accordingly.

[R.K. ABICHANDANI, J.]

[D.H. WAGHELA, J.]

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